

EXHIBIT B

Judy Waterer
May 9, 2007

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1 IN THE CIRCUIT COURT OF
2 MONTGOMERY COUNTY, ALABAMA

3 STATE OF ALABAMA,
4 Plaintiff,
5 vs. CIVIL ACTION NO. 2005-219
6 ABBOTT LABORATORIES, INC.,
7 et al.,
8 Defendants.

9 -----
10 IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
11 STATE OF HAWAII

12 STATE OF HAWAII,
13 Plaintiff,
14 vs. CIVIL NO. 06-1-0720-04 EEH
15 ABBOTT LABORATORIES, INC.,
16 et al.,
17 Defendants.

18 -----
19 UNITED STATES DISTRICT COURT
20 DISTRICT OF MASSACHUSETTS

21 THE COMMONWEALTH OF MASSACHUSETTS,
22 Plaintiff,
23 vs. C.A. NO. 03-11865 PBS
24 MYLAN LABORATORIES, INC.,
25 et al.,
 Defendants.

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VOLUME I

The videotaped deposition of JUDY WATERER,
VOLUME I, was taken before Cornelia J.
Baker, Certified Court Reporter and
Certified Shorthand Reporter, as
Commissioner, on Wednesday, May 9, 2007,
commencing at approximately 10:13 a.m., in
the law offices of Kirkland & Ellis, 153
East 53rd Street, New York, New York
pursuant to the stipulations set forth
herein.

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1 A. WAC is the price that we sell
2 the drug to the wholesaler. WAC is the price
3 that will remain. If the wholesaler does not
4 sell that through a contract where we would
5 honor a lower price, it will sell at WAC. If
6 the wholesaler returns the item to us, we
7 give them WAC back. WAC is on the invoice.
8 WAC is the price.

9 Q. Does Roxane ever report WAC
10 directly to the Alabama Medicaid Agency?

11 A. I don't know.

12 Q. Well, if Roxane did report WACs
13 directly to the Alabama Medicaid Agency, you
14 would know that, wouldn't you?

15 A. I don't know that I've ever had
16 information about what information goes
17 specifically to what state.

18 Q. Who would know that at Roxane?

19 A. I'm not sure.

20 Q. Are you saying you think it may
21 or may not go on, and you just don't know
22 about it, or are you saying you don't think
23 it happens?

24 A. I don't know.

25 Q. And you don't know who would?

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1 A. I'd have to speculate. I don't
2 know.

3 Q. Does Roxane ever change the
4 AWP's that are reported to First DataBank?

5 A. Roxane has changed AWP's and
6 subsequently reported the changes.

7 Q. And do the changes -- well,
8 what has to happen for Roxane to change an
9 AWP?

10 A. I don't understand.

11 Q. Why would Roxane change an AWP?

12 A. We have products in a variety
13 of categories. Some of our products, where
14 the competitive environment will permit us to
15 take a price increase, we would take a price
16 increase. Somewhat the way a brand product
17 might, as the cost of living goes up, we
18 would take a price increase. That would be
19 one example.

20 Q. Does Roxane ever change AWP's
21 based on customer concerns?

22 A. I can recall one example.

23 Q. Tell me what you remember about
24 that example.

25 A. We had a product, Furosemide --

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1 I think it was Furosemide.

2 THE COURT REPORTER: What was
3 that?

4 THE WITNESS: I think it was
5 Furosemide, F-U-R-O-S-E-
6 M-I-D-E.

7 A. Competitive situations, we'd
8 never really sold much. I think we had less
9 than a one- or two-percent market share.
10 Sold virtually none of it.

11 The competitive situation
12 changed in the marketplace. A number of
13 vendors came to us and said, Hey, we never
14 looked at you or talked to you about it
15 before, because we were happy with our
16 vendor. Now we're not. Can you give us a
17 bid?

18 We gave them very competitive
19 bids. And the feedback that we got from the
20 customers was not joy that we'd given them
21 competitive bids, but frustration, because
22 they indicated that our AWP was out of line
23 with everybody else's in the market, and they
24 would be unable to award us any business at
25 that AWP.

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1 Q. And what did Roxane do as a
2 result of those customer concerns?

3 A. After quite a few months of
4 analysis and verification that it wasn't just
5 one customer that was saying this, we ended
6 up bringing our pricing in line with
7 everybody else's in the business.

8 Q. I mean, in part, competitive-
9 ness drives the AWP that Roxane reports,
10 correct?

11 MS. WITT: Object to the form.

12 A. I think it's probably a
13 mischaracterization of the importance of AWP.
14 AWP is almost always the same for everybody,
15 so it's not something that people consider.

16 Q. Well, you know that state
17 Medicaid agencies consider AWP when they
18 reimburse, correct?

19 A. I've become aware of that, yes.

20 Q. What do you mean when you say
21 you've become aware of that?

22 A. This litigation in various
23 forms has been going on for many, many, many
24 years. And because of it, I've learned a lot
25 of things that I wouldn't normally need to

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1 know for my day-to-day activities.

2 Q. Didn't you know back as early
3 as 1996 that state Medicaid agencies
4 reimbursed based on AWP?

5 A. I don't know if I knew
6 specifically state. I would say that I had a
7 general awareness that private-party
8 insurers, that AWP may be of -- something
9 that they tied reimbursement to.

10 I don't recall having specific
11 knowledge as to an individual state or a
12 program.

13 Q. But you've known since as early
14 as 1996 when you started with Roxane that the
15 AWP that Roxane reported was relied upon by
16 certain payors when they reimbursed, correct?

17 A. In a broad general sense,
18 that's -- as I said before, aware that
19 certain payors, primarily private payors,
20 have some formulas that tied to that, yes.

21 Q. There is no other reason or
22 purpose for Roxane to report AWP, other than
23 the fact that certain payors rely on that AWP
24 when they reimburse, correct?

25 A. No.

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1 A. That was one of her
2 responsibilities when she reported to me,
3 yeah.

4 Q. All right. I'm going to show
5 you an exhibit I'm going to mark as
6 Plaintiffs' Exhibit 5. This was previously a
7 deposition exhibit in Ed Tupa's deposition,
8 654. Take a look at that, please, ma'am, and
9 tell me if you recognize it.

10 (Whereupon Plaintiffs' Roxane
11 Waterer No. 5 was marked for
12 identification and attached
13 hereto.)

14 (Witness reviewed document.)

15 A. I think this might have come up
16 in prior depositions.

17 Q. Do you remember this document?

18 A. With regard to seeing it before
19 on depositions, yes. With regard to
20 originally writing it, no.

21 Q. The top portion of the document
22 is an e-mail from Ms. Paoletti to yourself,
23 correct?

24 A. Yes.

25 Q. Dated November 5th, 1999,

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1 correct?

2 A. Yes.

3 Q. And Ms. Paoletti says to you
4 that she's spoken with Terri from First
5 DataBank and that First DataBank is now
6 willing to remove Roxane's WAC pricing from
7 the database, correct?

8 A. Yes.

9 Q. Roxane had requested that First
10 DataBank remove WAC pricing from the
11 database?

12 A. We had requested that they
13 cease publishing incorrect WAC information.
14 And we had taken a position that we were no
15 longer reporting WAC. So what they had in
16 their system was inaccurate.

17 Q. How was it discovered that
18 First DataBank was publishing inaccurate WAC
19 information?

20 A. I'm not sure how it was
21 exactly, quote, discovered. The trail of
22 this e-mail would indicate that there were
23 customer complaints on reimbursement which
24 led us to check the data and find out that
25 the information was incorrect.

